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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,091	09/05/2000	Johann Meseth	GR 98 P 3112	8366
24131 7590 01/14/2008 LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480			EXAMINER PALABRICA, RICARDO J	
			ART UNIT 3663	PAPER NUMBER
			MAIL DATE 01/14/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/655,091

Applicant(s)

MESETH, JOHANN

Examiner

Rick Palabrica

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007 and 17 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-10 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-10, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

1. Applicant's 12/6/07 election without traverse of Group I (Apparatus) with claims 1-4, 7-10, 15 and 16 readable thereon, is acknowledged.

### ***Response to Arguments***

2. Applicant traversed the rejection of claims in the 7/31/07 Office action based on applied art Gaouditz et al. on the grounds that:

a) *"Although the tube-coil 37 is spatially (in a coordinate sense) also close to the upper opening of the bubbling duct 14, the upper opening is exclusively in direct fluidic connection with enclosure 7, which is identified by the Examiner as the pressure chamber. The condenser 37 is, however, located outside of the inner space (enclosure) 7 and in the outer space 10 which is separated from the inner space (enclosure) 7 by steel walls. In other words, even if the noncondensable gases are drawn off into the outer space 10 from the top region of the inner space 7 (namely, the pressure chamber) through the bubbling duct 14, this has no advantageous effect on condenser 37"*

b) *"Further, the condenser 37 only contributes to the cooling of the atmosphere located in the outer space 10 above the liquid 11, not the cooling of the atmosphere in the inner space 7."*

The examiner disagrees.

As to argument a), the claims are directed to an apparatus and not to a process.

Applicant's argument is based on process limitations that do not serve to patently distinguish the claimed structure over that of the reference, as long as the structure of the cited references is capable of performing the intended use. See MPEP 2111-2115.

See also MPEP 2114 that states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647.

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Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531.

[A]pparatus claims cover what a device is, not what a device does.” Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

The system in the cited reference is capable of being used in the same manner and for the intended or desired use as the claimed invention. Note that it is sufficient to show that said capability exists, which is the case for the cited reference, as further clarified below.

Claim 1 recites:

*“said condenser and said upper end of said drain pipe being disposed in said pressure chamber, and said upper end of said drain pipe being disposed to permit the noncondensable gases to be led off from atmosphere surrounding said condenser and thermally interacting with said condenser.”*

The structural elements of the claimed apparatus are the condenser and drain pipe disposed in the pressure chamber. The limitation, “to permit the noncondensable gases to be ...” is a process limitation and not a structural limitation. Applied art Gaouditz et al. is capable of meeting this process limitation.

During the operation of a nuclear power plant, such as in Gaouditz et al., non condensable gases are inherently present in enclosures 7, 8, 31 and 34. Contrary to applicant’s allegation, condenser 37 and its surrounding atmosphere are NOT separated from enclosure 7. The condenser 37 atmosphere is fluidly connected to the atmosphere inside enclosure 7 through duct 31 (see Fig. 1). Thus, noncondensable gases can flow from the enclosure 34 (where condenser 37 is located) to enclosure 7,

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and this flow cannot be prevented because of said fluid connection between the two enclosures. Thus, Gaouditz et al.'s drain pipe 14 is capable of leading off noncondensable gases from the atmosphere surrounding condenser 37. Note that the claim does not preclude these gases from first flowing into enclosure 7 before being led off by drain pipe 14.

As to argument b), it appears that applicant is arguing that his condenser 16 cools the interior space of containment 1. However, the above-cited feature upon which the applicant relies is not recited in rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Additionally, if said unrecited feature is considered by the applicant to be critical to his invention, then such omission would amount to a gap between the essential elements. In this case, the claim(s) would be incomplete and would be rejected under 35 U.S.C. 112, second paragraph. See MPEP § 2172.01.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 1-4, 7, 8, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaouditz et al. (U.S. 4,022,655), who disclose a containment vessel of a nuclear power plant.

The reasons are the same as those stated in section 2 of the 7/31/07 Office action, as further clarified in section 2 above, which reasons are herein incorporated.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaouditz et al., either alone or in combination with Sawyer (U.S. 5,303,274). Gaouditz et al. teach applicant's claim limitations except for an external cooling basin for the condenser.

The reasons are the same as those stated in section 3 of the 7/31/07 Office action, as further clarified in section 2 above, which reasons are herein incorporated.

### ***Conclusion***


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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 571-272-6880. The examiner can normally be reached on 6:00-4:30, Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RJP  
January 4, 2008

  
RICARDO J. PALABRICA  
PRIMARY EXAMINER